

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, D.C. 20554

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Federal Communications Commission  
Office of Secretary

Amendment to the Commission's Rules )  
Regarding a Plan for Sharing the Costs )  
of Microwave Relocation )

WT Docket No. 95-157  
RM-8643

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**REPLY COMMENTS OF PRIMECO PERSONAL COMMUNICATIONS, L.P.  
TO FURTHER NOTICE OF PROPOSED RULE MAKING**

PrimeCo Personal Communications, L.P. ("PrimeCo") submits these replies to the comments made on the Commission's further notice of proposed rule making (the "Notice") in the matter captioned above.

In its comments, PrimeCo opposed any changes to the relocation rules on the ground that the *Notice* had adduced no evidence demonstrating the need for changes to these rules. In the usual course of events, evidence demonstrating the need for Commission action is typically presented before a new rule is promulgated. This would seem an especially fitting procedure when considering changes to a set of rules that the FCC itself has consistently found to be a fair and delicate balance of competing interests. The *Notice*, however, refers to no such evidence and makes no proposed findings that the current rules have failed of their purpose. Consequently, PrimeCo is unable to support the proposed changes to the FCC's microwave relocation rules and urges the Commission to reject them.

PrimeCo also stated its opposition to the participation of incumbent microwave carriers in the cost sharing plan unless adequate safeguards existed to prevent abuse of the

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system. It is clear from the comments of UTC and others that abuse is exactly what is contemplated. The incumbents intend to use the cost-sharing plan as a means of upgrading their facilities at no cost to themselves. Future PCS licensees are to foot the entire bill for these improvements. UTC, for example, explains the arrangement as a matter of equity:

The cost-sharing formula must be applied equitably to both PCS and incumbent participants. Therefore, incumbents can and should be treated as an initial relocater subject to the rules for the relocation of links entirely outside the relocater's frequency block. These rules specify that such relocations are not subject to depreciation under the cost-sharing formula.<sup>1</sup>

Under this view of things, an incumbent who would like to upgrade its facilities today but whose links may not be subject to relocation for some time to come,<sup>2</sup> may improve those facilities immediately, enjoy the benefit of the improvement, and, at some later date, demand 100% reimbursement from the PCS licensee whose inauguration of service triggers an obligation to pay. While the relocation rules confer quite breath-taking advantages upon the incumbents, this benefit - involuntary contributions to the incumbents' construction budgets - was surely not among them. The approach UTC champions, then, is nothing more than a gratuitous tax upon PCS licensees, and PrimeCo urges the Commission to reject it.

### CONCLUSION

For the reasons set forth above, PrimeCo submits that there is no reason to make changes in the microwave relocation rules for the C, D, E, and F bands. In addition,

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<sup>1</sup> Comments of UTC at 9.

<sup>2</sup> The links may be in a remote location and not part of the licensee's initial build out, or the licensee may be able to "work around" the links in question for some considerable period of time. Thus, UTC now aims to eliminate perhaps the only point of leverage that PCS licensees have had in relocation negotiations.

PrimeCo urges the Commission not to permit the incumbent microwave carriers to participate in the cost-sharing plan.

Respectfully submitted,

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